

26 AUGUST 1970

Approved For Release 2002/05/07 : CIA-RDP74B00415R000600010008-3

The Washington Report by Robert S. Allen and John Goldsmith

Douglas Lawyer Challenges House

JUSTICE WILLIAM O. DOUGLAS is resorting to a new strategy in fighting the House drive to impeach him.

The ultra-left jurist is brushing aside as inapplicable those charges of improper conduct made against him by House members, and is flatly maintaining that the only basis on which he can be impeached is "indictable" or "criminal" grounds.

This extraordinary claim is categorically rejected by House Republican Leader Gerald Ford (Mich.).

Citing numerous precedents and authorities to the contrary, Ford vigorously asserts that "conduct of a federal judge properly subject to impeachment need not be 'indictable' or 'criminal,' and might even consist of conduct which would be blameless if committed by a private citizen."

DOUGLAS' CHALLENGE of the House's right to impeach him for alleged misconduct is made in a lengthy "legal memorandum" by Simon Rifkind, former federal judge who is acting as Douglas' attorney.

This document is being circulated among members of the House Judiciary Committee, which for more than four months has been conducting a dawdling and highly criticized investigation of Douglas.

A request by this column for a copy of Rifkind's memorandum was refused by Rep. Emanuel Celler (D., N. Y.), committee chairman, on the ground he had not yet read it.

DESPITE THIS SECRECY, AN EXAMINATION of Rifkind's 10-page memorandum reveals two main thrusts behind Douglas' strategy:

(1) To make it appear that Congress, in seeking to oust him, is attempting to "increase its own power (and) to subject another branch (of the government) to its domination.

(2) To dismiss the various charges of misconduct against Douglas, and to maneuver the opposition into the position of arguing the issue of his removal solely on Rifkind's thesis of limited impeachment power.

Striking directly at these diversionary tactics, Ford declares:

"The Rifkind memorandum neglects to reveal that virtually every learned student of the Constitution since the founding of our government denies the validity of Rifkind's argument that 'only criminal conduct' is impeachable. . . . It is an incontrovertible fact that virtually every recognized legal authority completely demolishes Rifkind's thesis that only 'criminal' conduct is impeachable."

BIPARTISAN HOUSE CRITICS of Douglas are privately raising sharp questions regarding the basis of Rifkind's employment as the associate justice's counsel.

Being asked are the following: Whether Rifkind is being paid, and if so, how much and by whom? Also, whether Rifkind's law firm has cases pending before the Supreme Court; whether he is personally representing clients there; and who they are.

Rifkind's large firm has an extensive corporate practice, much of it before federal judges. He appears frequently in such courts.

IN RIFKIND'S MEMORANDUM, the former New York district jurist completely ignores the numerous charges of improper conduct against Douglas. For Congress to challenge a jurist on any other than "indictable" or "criminal" grounds is, in Rifkind's opinion, an attempt to "subvert the constitutional system which has proven its value over nearly two centuries."

In support of this thesis, Rifkind cites a few authorities and pronouncements. Ford's retort is to brusquely brand these references as "to a considerable degree grounded on historical inaccuracy."

"For example," says Ford, "Rifkind claims that past impeachment proceedings, notably that of Justice Chase, conclusively establish that impeachment would lie only for 'criminal conduct' or 'criminal offenses.' The plain fact is that the Chase impeachment merely established that impeachment was not to be a purely partisan weapon."

Ford points out that there have been nine federal judiciary impeachments in the history of the country. Four were acquittals, two were not defended, one resigned, and two were convicted—Judges Archibald and Ritter.

"The Rifkind memorandum," says Ford, "airily dismisses the principles established by the Archibald and Ritter cases, the solemn recognition given by the House of Representatives to the principles in Cannon's Precedents and the virtually unanimous view of historians and other authorities . . . that the meaning of 'high crimes and misdemeanors' has broadened to include elements of 'good behavior.'"

DOUGLAS INQUIRY HELD OBSTRUCTED

Celler Says 3 U.S. Agencies
Have Withheld Information

By WARREN WEAVER

Special To The New York Times

WASHINGTON, Aug. 5 —

The chairman of a special House subcommittee considering the impeachment of Associate Justice William O. Douglas of the Supreme Court contended today that its preliminary inquiry was being obstructed by the refusal of Federal agencies to supply necessary information.

Representative Emanuel Celler, the Brooklyn Democrat who also heads the Judiciary Committee, said in a statement that the State Department, the Justice Department and the Central Intelligence Agency had not furnished him material requested six weeks ago.

"These delays and obstructions have hampered the special subcommittee in this investigation and hindered the completion of its task," Mr. Celler said. "In the light of the lack of cooperation from the executive branch, criticism of the special subcommittee is not justified."

A Justice Department spokesman said that Attorney General John N. Mitchell had sent Mr. Celler a letter that constituted "our report" three weeks ago, advising him that he could inspect other records at the department if he wished.

At the State Department, an official said the information requested by the House subcommittee was being "put together" and should be ready by the end of the week. The official said it had taken time because some material had to be gathered from "several embas-

sies abroad."

A C.I.A. spokesman said the agency would have no comment.

The subcommittee was given the assignment of studying charges made against Justice Douglas as an alternative to creating a special committee, as 110 Democrats and Republicans had urged.

The House minority leader, Representative Gerald R. Ford of Michigan, who has led the campaign against Justice Douglas, has accused him of advocating "hippie-Yippie style revolution," writing for allegedly pornographic magazines, links to left-wing organizations and possible connections with gamblers.

On Monday, two House members pressing for the impeachment of Justice Douglas accused the Celler subcommittee of stalling. Representative Joe D. Waggoner Jr., Democrat of Louisiana, called the inquiry "a travesty"; Representative Louis C. Wyman, Republican of New Hampshire, said it was a "contrived whitewash."

The subcommittee, which was created last April 21, was given 60 days to complete its assignment and then a 60-day extension, so its time will expire on Aug. 19. Mr. Celler said earlier this week that he had not yet decided whether to ask for another extension.

In his statement today, Mr. Celler outlined a three-phase procedure that appeared capable of postponing any definite action until after Congress begins its campaign recess on Oct. 15.

The first phase involves the collection of information; the second the holding of hearings and a recommendation to the full committee as to whether an impeachable offense has been committed, with procedural recommendations; and the third phase involves a completion of the investigation by the full committee and a report to the House.